

<sup>2</sup> For decisions issued prior to November 19, 2008, a claimant had up to one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

### **FACTUAL HISTORY**

On October 9, 2012 appellant, then a 42-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a bone spur in her left heel as a result of her federal employment duties. She first became aware of her condition and of its relationship to her employment on August 22, 2012. Appellant notified her supervisor on October 9, 2012. The employing establishment controverted the claim.

Appellant submitted a U.S. Postal Service (USPS) “voluntary program for obtaining physical therapy benefits” instruction form and an OWCP Form CA-2 Rights and Responsibilities packet.

By letter dated November 8, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed to be submitted within 30 days.

In an August 22, 2012 return to work note, appellant was advised that she could resume her regular work activities on August 23, 2012.

In an August 22, 2012 diagnostic report, Dr. Farnoosh Nooryani, a Board-certified diagnostic radiologist, reported that an x-ray of the left and right foot revealed degenerative changes at the site of Achilles tendon insertion and a small calcaneal spur on the left foot.

In disability certificates and prescription notes dated August 22, November 29 and December 4, 2012, Dr. Michael J. Marcus, a doctor of podiatric medicine, reported that appellant was restricted from working due to severe pain in both heels, calcaneal spur.

By decision dated January 8, 2013, OWCP denied appellant’s claim on the grounds that the evidence was insufficient to establish that she sustained an injury. It found that the occupational exposure occurred as alleged; however, that the evidence failed to provide a firm medical diagnosis which could be reasonably attributed to her federal employment duties.

On July 1, 2013 appellant requested reconsideration of OWCP’s decision. She stated that she received medical treatment for her injuries and believed that it was caused by her employment. Appellant further stated that she had documentation and that Dr. Marcus had all of her records. The record reveals that no other evidence was submitted.

By decision dated September 3, 2013, OWCP denied appellant’s request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new

evidence not previously considered by OWCP.<sup>3</sup> Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>4</sup>

### ANALYSIS

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.<sup>5</sup>

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her July 1, 2013 application for reconsideration, she did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a new and relevant legal argument. Her argument was that her employment caused her injury and that Dr. Marcus had all of her records. The underlying issue in this case was whether appellant sustained a diagnosed condition causally related to her federal employment duties as a mail carrier. That is a medical issue which must be addressed by relevant medical evidence.<sup>6</sup>

Appellant failed to submit any evidence with her July 1, 2013 reconsideration request. To establish a firm medical diagnosis and causal relationship, she must submit a physician's report in which the physician reviews those factors of employment alleged to have caused her condition and, taking these factors into consideration, as well as findings upon examination and her medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his opinion.<sup>7</sup> Appellant's recitations of the facts do not support her allegation that her employment factors as a mail carrier caused her injury.<sup>8</sup> It is her burden to submit medical evidence in support of her claim. A claimant may obtain a merit review of an OWCP decision by submitting new and relevant evidence. As appellant failed to submit any medical evidence containing a physician's opinion prior to OWCP's September 3, 2013 decision, OWCP properly denied merit review of her claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or

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<sup>3</sup> *D.K.*, 59 ECAB 141 (2007).

<sup>4</sup> *K.H.*, 59 ECAB 495 (2008).

<sup>5</sup> *Glen E. Shiner*, 53 ECAB 165 (2001). Abuse of discretion is generally shown through proof of manifest error clearly unreasonable exercise of judgment or actions taken that are contrary to both logic and probable deduction from established facts.

<sup>6</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>7</sup> *Supra* note 6.

<sup>8</sup> *Paul Foster*, 56 ECAB 1943 (2004); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration without a merit review.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated September 3, 2013 is affirmed.

Issued: June 6, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board